

**SUPREME COURT OF THE STATE OF MISSISSIPPI  
MISSISSIPPI COURT OF APPEALS**

**LINDA W. LOCHRIDGE**

**APPELLANT**

**VS.**

**NO. 2010-CA-01529**

**PIONEER HEALTH SERVICES  
OF MONROE COUNTY, INC.**

**APPELLEE**

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**BRIEF OF APPELLEE**

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On Appeal from the Circuit Court of Monroe County, Mississippi

Oral Argument NOT Requested

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Services of Monroe County, Inc.*

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Pioneer Health Services of Monroe County, Inc., Appellee;
2. J. Tucker Mitchell and Matthew T. Biggers, and Mitchell Day, PLLC, Attorneys for Appellee;
3. Keely R. McNulty, Attorney for Appellee;
4. Marissa Atkinson and Copeland, Cook, Taylor & Bush, P.A., formerly Attorneys for Appellee;
5. Linda W. Lochridge, Appellant;
6. Jim Waide and Waide & Associates, P.A., Attorneys for Appellant; and
7. Honorable Jim S. Pounds, Circuit Court Judge for the First Circuit Court District of Mississippi.

  
\_\_\_\_\_  
Attorney of Record for Appellee Pioneer  
Health Services of Monroe County, Inc.

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## **STATEMENT OF THE ISSUES**

1. Whether the Circuit Court of Monroe County properly granted summary judgment in favor of Pioneer Health Services of Monroe County, Inc.

## **STATEMENT OF THE CASE**

Appellee Pioneer Health Services of Monroe County, Inc. ("Pioneer") asks this Court to affirm the Monroe County Circuit Court's grant of summary judgment in its favor. On May 4, 2007, Linda Lochridge ("Lochridge") was relieved from her position as a registered nurse with Pioneer's Garden Suites assisted living facility in Aberdeen, Mississippi. (R.at 14). Pioneer laid Lochridge off due to restructuring and money-saving needs for the assisted living facility. (R.at 55, 57). Around the lunchtime hour on May 4, 2007, Susan Grimes (director of assisted living) and Linda Smith (human resources) met with Lochridge, informing Lochridge of the lay-off and offering her the opportunity to acquire any other available registered nurse position at any of Pioneer's facilities. (R. at 55, 57; R. at 109). During this meeting, Lochridge signed paperwork and turned in her keys to the facility. (R. at 57; R at 111).

After that meeting, Lochridge was accompanied by Pioneer maintenance employees Eddie Ridings and Donny Stacy to retrieve her personal belongings in the facility and leave the premises. (R. at 57; R. at 110). Lochridge drove home after loading her belongings into her vehicle. (R. at 111). Later, on the evening of May 4, 2007, Lochridge met friends, some of whom were former co-workers and Pioneer employees, for dinner at the Best Western. (R. at 112). During conversation at dinner, some of the women, including Lochridge, decided they would return to the assisted living facility to remove items from the premises that Lochridge allegedly owned and/or purchased. (R. at 113). Lochridge, in fact, returned to the facility that night (R. at 113), used an employee's key to enter a locked office to remove property that belonged to Pioneer (R. at 120), and had a former co-worker use an electric screwdriver to remove the gazebo which was anchored to a concrete patio at the facility. (R. at 114). Lochridge and/or her friends/former co-workers removed the following items from the facility: several bulletin boards, small refrigerator, gazebo, patio set and four chairs,

end table, table fan, electric piano, four yard figurines, approximately 100 pieces of arts and crafts supplies, approximately 10 letter racks, miscellaneous office supplies, policy and procedure manuals, two boxes of holiday decorations, ornamental table, three figurines, coffee pot, barbeque grill, book case, books and directory, medical dictionary, files, Rolodex containing phone numbers used in conducting Pioneer business, patient medication, and a fax machine. (R. at 132).

At approximately 11:30 p.m. on May 4, 2007, Susan Grimes received a voice message from Lochridge that Lochridge had returned to the facility and “got her things.” (R. at 61; R. at 124). Upon receiving that message, Grimes telephoned the assisted living facility and spoke with employee Ollie Burroughs, who informed Grimes that Lochridge had taken the piano, gazebo, patio furniture, and “some of everything.” (R. at 61-62). Grimes then called her supervisor, facility administrator Steve Fontaine, informed him of what she had been told, and sought direction on how to proceed in handling the situation. (R. at 61). Fontaine instructed Grimes to call Lochridge and request that the items be returned to Pioneer. (R. at 61). Fontaine also instructed Grimes to call the police if Lochridge did not return the items. (R. at 61). Grimes called Lochridge and relayed that information via a message on Lochridge’s voice mail. (R. at 61).

Also on the night of May 4, 2007, Grimes informed the Monroe County Sheriff Department and the Aberdeen Police Department (“APD”) of the incident, stating that Lochridge entered the facility without permission and removed several items. (R. at 62-63). APD stated that an officer would be sent to the facility to inspect and instructed Grimes to prepare a list of the items taken from the Pioneer premises. (R. at 63). After speaking with APD, Grimes again called Lochridge and requested that the items be returned. (R. at 63). Grimes also informed Lochridge that the police had been notified. (R. at 63).

After receiving Grimes’ message, Lochridge contacted her friends and former co-workers and

told them to return the items taken from the facility. (R. at 121). Some of the items were returned. (R. at 64). At approximately 7:00 a.m. on May 5, 2007, Grimes received another voice mail message from Lochridge stating that Lochridge returned the items “even though it wasn’t all yours.” (R. at 63; R. at 124).

In a written incident report dated May 9, 2007, it was reported to APD that Lochridge removed certain items from Pioneer’s assisted living facility. (R. at 130-133). On May 9, 2007, APD Major Quinell Shumpert signed a General Affidavit charging Lochridge with unlawfully carrying away goods belonging to Pioneer valued in excess of \$3,000. (R. at 134). Also on May 9, 2007, a warrant for the arrest of Lochridge was issued. (R. at 135-137). Lochridge turned herself in to the APD on the same day. (R. at 135). Upon turning herself in, Lochridge met with Major Quinell Shumpert and provided receipts as proof of purchases of some of the items she removed from the facility. (R. at 145). Also at the time she turned herself in, Lochridge had in her possession several patient files and other items that belonged to Pioneer. (R. at 115; R. at 149). Major Shumpert informed Lochridge that she could not keep the patient files and other Pioneer property and that they must be returned to Pioneer. (R. at 115; R. at 149). Lochridge turned over the following items to Major Shumpert: work schedules; check requisitions from 2005 and 2006; HP printer documentation; Adobe Photoshop software; Microsoft Windows software; HP printer software; list of assisted living prospective residents; resident/patient personal and account information for Ophelia Clark, including Social Security information, Medicare information, bank account information, pharmacy bills, telephone and cable bills, and insurance information; 2004-2007 in-service records/sign-in sheets, handouts, and tests; miscellaneous receipts; assisted living marketing materials; fish tank information and receipts; and resident/patient file information for Helen McLemore. (R. at 985-1738).



The Monroe County Grand Jury indicted Lochridge on January 18, 2008. (R. at 18-19). Pioneer was not contacted concerning the criminal trial of Lochridge until shortly before the trial date, when Pioneer was requested to provide, within 48 hours, documentation related to reimbursements made to Lochridge for the items taken from the facility on May 4, 2007. (R. at 69). Pioneer could not obtain such documentation in that time frame because if it existed, the documentation was located in Magee, Mississippi. (R. at 69). Due to that situation, the assistant district attorney then presented Pioneer the option of retiring the matter to the file. (R. at 69). Pioneer then communicated to the Monroe County District Attorney that it did not wish to pursue criminal charges against Lochridge at that time. (R. at 69; R. at 170). The criminal case was retired to the file on February 29, 2008. (R. at 21). On September 11, 2008, an order was entered dismissing the criminal case against Lochridge. (R. at 22).

On November 18, 2008, Lochridge filed her Complaint in this matter, alleging causes of action against Pioneer for abuse of process and malicious prosecution. (R. at 13-22). Lochridge alleged she removed her personal property from the assisted living facility after being informed of her termination. (R. at 14). Lochridge further alleged that Pioneer was determined to retaliate against her and threatened her with arrest if she did not return the items she had removed from the facility. (R. at 14). Lochridge alleged that the threat of arrest was malicious and in response she returned certain items to Pioneer “even though they belonged to her.” (R. at 14). Lochridge contended that Pioneer initiated false charges of burglary against her, claiming she had stolen property and had taken certain hospital files. (R. at 14).

During the course of discovery, Pioneer requested that Lochridge produce copies of documents she created while employed with Pioneer and that she created and/or retained on her personal laptop computer that she used for Pioneer’s business purposes during her employment with

Pioneer. (R. at 182). Lochridge produced a disk that contained the following documents:

- 36 photographs of residents, one of which also depicted a sign in the background soliciting donations for the electronic piano/keyboard
- work duties/assignments for CNAs
- list of patients/residents' dates of birth, phone numbers, and DNR wishes/medical condition
- staff memo/ "to do" lists
- meeting memos
- staff updates re: patients and things to do
- activities
- disaster callback list
- in-service documents and handouts
- employee lists with employees' phone numbers and shifts
- work schedules
- correspondence to doctors regarding residents
- patient medication charts
- resident basic information sheets (date of birth, contact information, medical history and diagnosis, Social Security numbers) for the following residents:
  - Kate Winders, Evelyn Wilson, Lucille Cliett, Burleson Stone, Bessie Sneed, Ann Wadsworth, Stella House, Cloie McDonald, Kathryn Davis, Nancy N. Wilson, Mertie Robinson, Lou Anna Paine, Minnie Byrd Stalnaker, Lois Lusk, Cloda McRae, L.C. Stewart, Louise B. Turman, Clovis Millican, Flora Maxine Covin, Clovis Williams, Verdell Lacy, Pernecie Roberts, Alton Nevins, Mattie Ott, Addie Adair, Cysel West, Elisabeth Baker, Ancil Evans, Mamie K. Roberts, Willie D. Rye, B.W. (Andy) Anderson, Lillian Bourland, Mary Edna Warren, Emory Ike Morgan, Madge Harrington, Wylodine Reed, James B. Wright, Elizabeth Lilley, Hazel Pope Haywood, Ophelia H. Clark, Novel Gentry, Emily Connor, Laura Webb, Nellie Gilbreath, Bert C. Houston, Etoile Walden, Archie Raigins, Marie India Wave, Ruby McCandless, John Staten, Emma Williams, Marvin Burroughs, Esther Callahan, Annie Boss Drake, Pauline "Polly" Butler, Merial Preston, Bill Maier, Marie Randolph, Helene McLemore, and Jackson Monroe Woodard
- activities calendar
- admissions requirements, checklist
- policy and procedures for resident care (09-07-05)
- assisted living staff/sitter contact information
- beauty shop schedule
- dietary order form
- application of licensure/annual report
- maintenance records for rooms
- nurses' notes forms
- sitter log forms
- resident yearly tests forms
- duties for nursing shifts

(R. at 185-984).

During her deposition, Lochridge offered no evidence or testimony to support her claim that Pioneer acted with animosity or malice, that her reputation had been damaged, or that she was entitled to punitive damages. (R. at 102-129).

On March 29, 2010, Pioneer filed its Motion for Summary Judgment and accompanying Memorandum in support of that motion. (R. at 28-39). On May 10, 2010, Lochridge responded to the Motion for Summary Judgment. (R. at 1739-1778). On May 28, 2010, Pioneer filed its Rebuttal to Lochridge's Response. (R. at 2063-2068).

The Circuit Court of Monroe County ("the trial court") heard oral argument on Pioneer's Motion on July 21, 2011. (Tr. at 1-23). On that date, the trial court granted summary judgment in favor of Pioneer on Lochridge's abuse of process claim. (Tr. at 20; R. at 2084). On August 31, 2010, the trial court granted summary judgment in favor of Pioneer on Lochridge's malicious prosecution claim. (R. at 2089-2093). On September 17, 2010, the trial court entered its Final Judgment of Dismissal of Lochridge's claims against Pioneer. (R. at 2094-2095). Lochridge appealed the trial court's summary judgment on her malicious prosecution claim to this Court on September 21, 2010. (R. at 2096). Lochridge amended her Notice of Appeal to this Court on September 30, 2010. (R. at 2098). Lochridge did not dispute or appeal from the trial court's summary judgment on her abuse of process claim.

## STANDARD OF REVIEW

The Mississippi Supreme Court employs a de novo standard of review in reviewing a lower court's grant of summary judgment. *Anglado v. Leaf River Forest Products*, 716 So. 2d 543, 547 (Miss. 1998).

A motion for summary judgment challenges the very existence of legal sufficiency of the claim or defense to which it is addressed; in effect, the moving party takes the position that he is entitled to prevail as a matter of law because his opponent has no valid claim for relief or defense to the action.

*Brent Towing Co., Inc. v. Scott Petroleum Corp.*, 735 So.2d 355 (Miss. 1999). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits or supporting documents, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Miss. R. Civ. P. 56(c). This Court will consider all the evidence before the lower court in the light most favorable to the non-moving party. *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So. 2d 790, 794 (Miss. 1995). The moving party has the burden of demonstrating that there is no genuine issue of material fact, while the non-moving party should be given the benefit of every reasonable doubt. *Vaughn ex rel. Vaughn v. Estate of Worrell*, 828 So. 2d 780, 782 (Miss. 2002). When a motion for summary judgment is made and supported as provided in Rule 56, the nonmoving party may not rest upon the mere allegations or denials in his pleadings. *Stuckey v. Provident Bank*, 912, So. 2d 859, 864 (Miss. 2005). The nonmoving party must set forth specific facts showing that there is a genuine issue for trial. *Id.* "When a party would bear the burden of proof at trial, and the party moving for summary judgment shows a failure to prove an essential element of a claim, then summary judgment should be granted." *Easley v. Day Motors, Inc.*, 796 So. 2d 236, 240 (Miss. Ct. App. 2001) (citing *Grisham v. John Q. Long V.F.W. Post, No. 4057, Inc.*, 519 So. 2d 413, 415 (Miss. 1988)).

## **SUMMARY OF THE ARGUMENT**

The Circuit Court of Monroe County properly granted summary judgment in favor of Pioneer on Lochridge's malicious prosecution claim. Malicious prosecution claims are not favored under the law and must be managed with great caution. To succeed on a claim for malicious prosecution, a plaintiff must prove all six elements of the tort by a preponderance of the evidence. Pioneer has shown that Lochridge has not and cannot prove the essential elements of malice and lack of probable cause in initiating the criminal proceedings against Lochridge.

The "malice" required to prove malicious prosecution exists when the primary purpose for initiating criminal proceedings is one other than bringing an offender to justice. A person may file a criminal complaint so long as he does so for a legitimate purpose and with a reasonable belief that the person against whom criminal charges are initiated may be guilty of the offense with which he is charged. In the instant case, there is no evidence of malice on the part of Pioneer. Lochridge's argument that Pioneer had some retaliatory objective in initiating criminal proceedings against her is merely an allegation without evidentiary support, as noted by the trial court. Pioneer's objective in initiating legal proceedings against Lochridge was to bring her to justice for taking property that belonged to Pioneer. Pioneer had sufficient believable information that Lochridge took items that belonged to Pioneer. Although Lochridge disputes that any of the property she removed belonged to Pioneer, items that Plaintiff turned over to APD on May 9, 2007 included patient information, in-service materials, marketing materials, and numerous other items that were undisputedly property of Pioneer.

Lochridge's claim for malicious prosecution also fails because Pioneer has shown that it had probable cause for initiating criminal proceedings against Lochridge. To determine the existence of want of probable cause, courts look to (1) a subjective element - an honest belief in the guilt of

the person accused, and (2) an objective element - reasonable grounds for such belief. Pioneer had an honest belief that Lochridge unlawfully removed items exclusive to and belonging to Pioneer from Pioneer's facility because Lochridge informed Pioneer through Grimes on the night of May 4, 2007 that Lochridge had returned to the facility and removed items. Lochridge had turned over her key to the facility earlier in the day when Pioneer laid her off. Pioneer also had reasonable grounds to believe Lochridge was guilty because Lochridge returned some of the items she removed from the facility on the night of May 4, 2007 and because additional Pioneer property was discovered to be in the possession of Lochridge when she turned herself in to APD on May 9, 2007. Pioneer did not control the specific charges pursued by APD and the Monroe County district attorney. Regardless of the specific charges pursued, Pioneer was justified in initiating criminal proceedings against Lochridge based on Lochridge's removal of Pioneer's property from the facility on the night of May 4, 2007. The district attorney presented evidence to the grand jury, and the grand jury felt there was probable cause to bring charges of burglary against Lochridge, as it issued an indictment of her. Lochridge cannot show circumstances from which absence of probable cause may be inferred. Therefore, she cannot establish an essential element of her claim for malicious prosecution, the lack of probable cause in instituting the proceedings.

The trial court properly granted summary judgment in favor of Pioneer due to the inability of Lochridge to establish that Pioneer acted with malice and without probable cause in initiating criminal proceedings against Lochridge. This Court should affirm that grant of summary judgment.

## ARGUMENT

### **I. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT REGARDING LOCHRIDGE'S MALICIOUS PROSECUTION CLAIM.**

Lochridge's claim for malicious prosecution fails. Malicious prosecution claims are not favored under the law and must be managed with great caution. *Croft v. Grand Casino Tunica, Inc.*, 910 So. 2d 66, 72 (Miss. Ct. App. 2005) (citing *State ex rel. Foster v. Turner*, 319 So. 2d 233, 235 (Miss. 1975)). To succeed on a claim for malicious prosecution, a plaintiff must prove the following elements by a preponderance of the evidence:

- (1) the institution or continuation of original judicial proceedings, either criminal or civil;
- (2) by, or at the insistence of, the defendants;
- (3) the termination of such proceedings in the plaintiff's favor;
- (4)✓ malice in instituting the proceeding;
- (5)✓ want of probable cause for the proceedings; and
- (6) the suffering of injury or damages as a result of the action or prosecution.

*Perkins v. Wal-Mart Stores, Inc.*, 46 So. 3d 839, 844 (Miss. Ct. App. 2010); *Richard v. Supervalu, Inc.*, 974 So. 2d 944, 948-49 (Miss. Ct. App. 2008) (citing *Alpha Gulf Coast, Inc. v. Jackson*, 801 So. 2d 709, 721 (Miss. 2001)); *Strong v. Nicholson*, 580 So. 2d 1288, 1293 (Miss. 1991). "The failure to prove any one of these elements by a preponderance of the evidence is fatal to the claim." *Perkins*, 46 So. 3d at 845. Lochridge cannot prove the elements of malice and want of probable cause in the instant case.

#### **A. Pioneer lacked malice in instituting legal proceedings against Lochridge.**

Pioneer has shown that Lochridge could offer no proof that Pioneer acted with malice in instituting legal proceedings against her. Plaintiff simply alleged that Pioneer initiated criminal proceedings as some sort of "retaliation" against her. "The malice required for malicious prosecution occurs when the primary purpose of prosecuting is one other than bringing an offender

to justice.” *Id.* “Malice does not refer to mean or evil intent, as a layman might ordinarily think. . . . It connotes a prosecution instituted primarily for a purpose other than bringing an offender to justice.” *Strong*, 580 So. 2d at 1293. “A citizen may file a criminal complaint as long as he acts either in good faith, i.e., for a legitimate purpose or with reasonable ground to believe that the person against whom proceedings are initiated may be guilty of the offense of which he is charged.” *Perkins*, 46 So. 3d at 845.

In *Perkins*, the Mississippi Court of Appeals found that Wal-Mart lacked malice in instituting criminal proceedings for petit larceny against Perkins where Wal-Mart alleged Perkins had taken a printer ink cartridge without paying for it as part of an “under-ringing” scheme. *Perkins*, 46 So. 3d 839. At that time, some cashiers at Wal-Mart were involved in an “under-ringing” scheme in which they would either fail to ring up an item or ring up an item and subsequently void the transaction, allowing a customer, usually a friend or co-worker, to take the item without paying for it. *Id.* at 842. Perkins, an off-duty Holly Springs police officer, went to Wal-Mart to make some purchases, including a printer ink cartridge. *Id.* Jackson, the cashier serving Perkins, rang up and then voided Perkins’ purchase of the printer ink cartridge, and Perkins left the store without paying for it. *Id.* Wal-Mart learned of the scheme, and its loss-prevention officer interviewed Jackson about her involvement. *Id.* Jackson admitted to her involvement and named Perkins as also being involved. *Id.*

Wal-Mart notified the Holly Springs Police Department, and Officer Wilson interviewed Jackson. *Perkins*, 46 So. 3d at 842. During that interview, Jackson stated that Perkins knew he did not pay for the printer ink cartridge. *Id.* Officer Wilson informed Wal-Mart’s loss-prevention officer of this information. *Id.* The loss-prevention officer then filed an affidavit against Perkins. *Id.* The Marshall County Justice Court acquitted Perkins of the petit larceny charges during his criminal trial



on January 23, 2006. *Id.* at 843. Perkins and Officer Wilson were co-workers at the Holly Springs Police Department, and the two had a strained relationship which caused Perkins to be reassigned, relieved of supervisory duties, and suspended for a period of time. *Id.* Perkins filed suit against Wal-Mart and Officer Wilson on December 14, 2006, alleging malicious prosecution, among other claims. *Perkins*, 46 So. 3d at 843-44. The trial court granted summary judgment in favor of both defendants based on a lack of malice. *Id.* at 844.

The Mississippi Court of Appeals affirmed the trial court's grant of summary judgment as to Wal-Mart, holding that Wal-Mart acted without malice. *Id.* at 846. The Court of Appeals found that Wal-Mart believed it had sufficient evidence to prosecute Perkins based on Jackson's recorded statement, the loss-prevention officer's affidavit, and Jackson's testimony that Perkins knew he did not pay for the printer ink cartridge based on the amount of change he received. *Id.* at 845.

In *George v. W.W.D. Automobiles, Inc.*, 937 So. 2d 958 (Miss. Ct. App. 2006), the plaintiff, George, visited Tom Wadler Nissan to purchase a vehicle. *Id.* at 960. Pending approval of her financing/credit application, the plaintiff took possession of a vehicle under a conditional delivery agreement. *Id.* The plaintiff's financing was rejected, and the dealership informed her of the rejection and requested numerous times for her to return the vehicle pursuant to the conditional delivery agreement. *Id.* George refused to return the vehicle, and the dealership instituted criminal proceedings against her, charging her with unauthorized use of a vehicle. *Id.* The plaintiff was arrested, but the criminal case against her was dismissed when the court determined the alleged offense was a civil matter rather than a criminal case. *Id.* George brought suit against the dealership for malicious prosecution.

The Court of Appeals found that a jury could easily have found malice on the part of the dealership because the dealership's general manager testified that the sole objective of the initiation

of criminal proceedings against George was for the dealership to regain possession of the vehicle rather than bringing George to justice. *George*, 937 So. 2d at 962-963; *see also Strong*, 580 So. 2d at 1293 (finding malice where defendants' lone purpose was to "get their stuff back"). The court found further evidence of the dealership's objective when it dropped charges against George upon regaining possession of the vehicle. *George*, 937 So. 2d at 963.

In the instant case, there is no evidence of malice on the part of Pioneer. Pioneer's objective in initiating legal proceedings against Lochridge was to bring her to justice for taking property that belonged to Pioneer. Like Wal-Mart in *Perkins*, Pioneer had sufficient believable information that Lochridge took items that belonged to Pioneer. Lochridge returned to the facility at night after being laid off and turning in her keys to the facility. (R. at 113). Lochridge used a key that did not belong to her to open a locked office and remove Pioneer property (R. at 113) and had a former co-worker use an electric screwdriver to remove a gazebo that was affixed to a concrete patio with screws. (R. at 120).

Regardless of who purchased the gazebo, it became a fixture and therefore part of the real estate owned by Pioneer when the gazebo was attached to the patio. A fixture is something which is affixed or attached as a permanent appendage or structural part of the land. *Ziller v. Atkins Motel Co., Inc.*, 244 So. 2d 409, 411 (Miss. 1971); *see also Check Cashers Exp., Inc. v. Crowell*, 950 So. 2d 1035, 1040 (Miss. Ct. App. 2007) (stating that a fixture is "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the real property"). "A fixture was originally personal property, but by reason of its annexation to or use in association with real property has become part of the realty as by means of concrete, plaster, nails, bolts, or screws." *Ziller*, 244 So. 2d at 411; *see also Check Cashers*, 950 So. 2d at 1040 ("A thing is deemed to be affixed to real property when it is permanently attached to what is thus permanent, as by means

of cement, plaster, nails, bolts, or screws.”). To determine if an item is a fixture, a court must take into account:

its nature, mode of attachment, purpose for which used, and the relation of the party making the annexation. . . . In some instances the intention to make the article a fixture may clearly appear from the mode of attachment alone, as where a removal cannot be made without serious injury to the property by the act of severance.

*Check Cashers*, 950 So. 2d at 1040-41 (quoting *Weathersby v. Sleeper*, 42 Miss. 732, 741-42 (1869).

When the gazebo was attached to Pioneer’s patio with screws and when the gazebo was used in association with the real property at Pioneer’s assisted living facility, under Mississippi law the gazebo became a part of Pioneer’s real property. Lochridge undisputedly removed the gazebo on the night of May 4, 2007, taking away Pioneer’s property.

Pioneer’s actions in instituting criminal proceedings against Lochridge were based upon information received from Lochridge and Pioneer employee Ollie Burroughs along with Grimes’ subsequent inventory. (R. at 61-62). Pioneer shared that information with APD Major Shumpert, who then filed a General Affidavit against Lochridge, charging her with burglary. (R. at 134). Further, Lochridge admitted that she entered onto Pioneer’s premises after being laid off and turning in her keys and removed property from the premises. (R. at 113-114). Although Lochridge disputes that any of the property she removed belonged to Pioneer, items that Plaintiff turned over to APD on May 9, 2007 included patient information, in-service materials, marketing materials, and numerous other items that were undisputedly property of Pioneer. (R. at 985-1738). Further, the gazebo removed by or at the direction of Lochridge became Pioneer’s property when it was affixed with screws to the patio at Pioneer’s facility.

Lochridge argues that there was no evidence for a charge of burglary and that there was no rational reason to believe there might have been. Appellant’s Br. at 21. Pioneer not only had a

reasonable basis to believe Lochridge removed patient files, in-service materials, marketing materials, a Rolodex containing phone numbers used for Pioneer's business purposes, and the gazebo from the facility; it is undisputed that Lochridge did in fact remove those items from the facility. Pioneer contacted APD regarding Lochridge's removal of Pioneer property from the facility, and initiated criminal proceedings against Lochridge in good faith to bring her to justice.

Pioneer's purpose in initiating legal proceedings against Lochridge was not simply to get the items back from Lochridge, as was the case in *George* and in *Strong*. Further, Pioneer only stated it did not wish to pursue criminal charges against Lochridge after the district attorney presented Pioneer with the option of retiring the case to the files. (R. at 69; R. at 170).

Lochridge cannot show that Pioneer initiated criminal proceedings against her with malice, i.e. for a purpose other than bringing her to justice. Lochridge's argument that Pioneer brought charges against her as a form of retaliation are simply allegations and are without evidentiary support, as the trial court noted in its August 31, 2011 Order granting summary judgment in favor of Pioneer. (R. at 2092). Therefore, Lochridge cannot establish an essential element of her claim for malicious prosecution, and Pioneer is entitled to judgment as a matter of law on Lochridge's malicious prosecution claim.

**B. Pioneer had probable cause to initiate legal proceedings against Lochridge.**

Lochridge's claim for malicious prosecution also fails because Pioneer has shown that it had probable cause for initiating criminal proceedings against Lochridge. "Probable cause is determined from the facts apparent to the observer when the prosecution is initiated." *Van v. Grand Casinos of Miss., Inc.*, 767 So. 2d 1014, 1020 (Miss. 2000); *Richard*, 974 So. 2d at 949. "To determine the existence of want of probable cause, courts look to (1) a subjective element - an honest belief in the guilt of the person accused, and (2) an objective element - reasonable grounds for such belief." *Page*

v. *Wiggins*, 595 So. 2d 1291, 1294 (Miss. 1992); *Strong*, 580 So. 2d at 1294. “So long as the instigator of the action reasonably believed he had a good chance of establishing his case to the satisfaction of the court or the jury, he is said to have had probable cause.” *Richard*, 974 So. 2d at 949. A claim for malicious prosecution fails when probable cause exists for the defendant to institute criminal proceedings. *Van*, 767 So. 2d at 1020.

In *Richard*, Richard operated a trucking company that hauled freight for Supervalu, Inc. *Id.* at 947. One truck operated by Richard had been unloaded at a Supervalu store in Indianola, Mississippi. *Id.* When Richard arrived to unload another truck, a Supervalu supervisor inspected the first truck, which had been unloaded and the door closed. *Id.* The supervisor found some merchandise exclusive to Supervalu remained in the trailer that should have been empty. *Id.* After the Supervalu receiving superintendent confirmed that the merchandise in the trailer belonged to Supervalu, Supervalu contacted the police to report the incident. *Id.* The Indianola Police Chief decided to arrest Richard for grand larceny. *Richard*, 974 So. 2d at 947. After the State of Mississippi dropped the charges against Richard, he sued Supervalu and other defendants for malicious prosecution, among other claims. *Id.* at 948. The trial court granted summary judgment to the defendants. *Id.* The Mississippi Court of Appeals affirmed the trial court’s award of summary judgment to the defendants, finding that there was probable cause to arrest Richard because the evidence established that Supervalu merchandise was found in Richard’s trailer that should have been empty. *Id.* at 949.

Even assuming for the sake of argument that some of the items Lochridge removed from Pioneer’s facility belonged to her, it is undisputed that Lochridge also removed items that belonged to and were exclusive to Pioneer. (R. at 2092). Those items that undisputedly belonged to Pioneer included patient information and files, in-service materials, marketing materials, and a Rolodex

containing phone numbers used for Pioneer's business purposes, among other items. (R. at 985-1738). It is further undisputed that Lochridge removed the gazebo that was anchored by screws to a patio at the facility on the night of May 4, 2007. As stated above, regardless of who purchased the gazebo, it became a fixture and therefore part of the real estate owned by Pioneer when the gazebo was attached to the patio and was used in association with the real property at Pioneer's assisted living facility.

From the facts available to Pioneer when it initiated the criminal proceedings against Lochridge, Pioneer had probable cause to institute those proceedings. Pioneer had an honest belief that Lochridge unlawfully removed items exclusive to and belonging to Pioneer from Pioneer's facility because Lochridge informed Pioneer through Grimes on the night of May 4, 2007 that Lochridge had returned to the facility and removed items. (R. at 61; R. at 124). These actions by Lochridge occurred after the termination of employment with Pioneer and after Lochridge had turned her keys to the facility over to Pioneer. (R. at 113). Pioneer also had reasonable grounds to believe Lochridge was guilty because Lochridge returned some of the items she removed from the facility on the night of May 4, 2007 and because additional Pioneer property was discovered to be in the possession of Lochridge when she turned herself in to APD on May 9, 2007. (R. at 985-1738). Lochridge contended that she only took some personal files, where she might document something she did for the patient's family that was not related to the facility. (R. at 114). As the trial court noted, it is undisputed that Lochridge had Pioneer's property because she turned over several items that belonged to Pioneer to APD. (R. at 2092). These items are enumerated above. (R. at 985-1738).

Lochridge argues that Pioneer lacked probable cause in initiating the criminal proceedings against her because the district attorney did not believe there was a basis for criminal charges.

Appellant's Br. at 22. That argument is based on pure speculation. There is no evidence of this alleged belief of the district attorney. In fact, the district attorney presented evidence to the grand jury, and the grand jury issued an indictment against Lochridge for burglary based on that evidence. (R. at 18-19). Pioneer did not testify at those grand jury proceedings. Further, Lochridge argued that there was no evidence for a charge of burglary. Appellant's Br. at 21. Pioneer instituted criminal proceedings against Lochridge because it reasonably believed Lochridge took Pioneer's property from the facility on the night of May 4, 2007, and therefore had probable cause to institute those proceedings. Pioneer did not control the specific charge of burglary pursued by APD and the district attorney. Regardless of the specific charges selected by APD and the district attorney, Pioneer was justified in initiating criminal proceedings related to Lochridge's removal of Pioneer's property from the facility. Further, the grand jury felt that the district attorney presented sufficient evidence to support a charge of burglary as shown by the indictment of Lochridge. As the trial court correctly stated, "[T]he grand jury of Monroe County found probable cause to indict [Lochridge] which further demonstrated probable cause." (R. at 2092).

Pioneer's honest subjective belief that Lochridge unlawfully removed items that belonged to Pioneer from the facility and the reasonable objective grounds for that belief show that Pioneer possessed probable cause to institute legal proceedings against Lochridge. Lochridge cannot show circumstances from which absence of probable cause may be inferred. Therefore, she cannot establish an essential element of her claim for malicious prosecution, the lack of probable cause in instituting the proceedings. Thus, Lochridge's claim for malicious prosecution fails, and Pioneer is entitled to judgment as a matter of law on that claim.

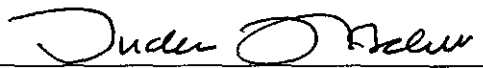
### **CONCLUSION**

This Court should affirm the Monroe County Circuit Court's grant of summary judgment in

favor of Pioneer. Pioneer has shown that there is no genuine issue of material fact that Lochridge cannot establish the essential elements of malice and want of probable cause to support her malicious prosecution claim.

This the 24<sup>th</sup> day of June, 2011.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I, J. Tucker Mitchell, certify that I have this day mailed by U. S. mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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This the 21<sup>st</sup> day of June, 2011.

  
\_\_\_\_\_  
J. TUCKER MITCHELL